In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 598

ATLAS ENGINE WORKS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. On July 15, 1965, a representative of International Brotherhood of Teamsters' Local Union No. 20, advised Company Personnel Director Warner by phone that the Union represented a majority of the Company's employees and requested a meeting for collective bargaining (Pet. App. 8a). Warner refused recognition, stating "that there were established procedures" by which the Union could petition for a Board election (Pet. App. 8a). The same day, the Union representative sent the Company a letter in

which he requested recognition and negotiations and asserted that the Union had authorization from a majority of the employees, and further offered "to submit the authorization cards signed by your employees to an impartial person for examination and count" (Pet. App. 8a). The Company by letter acknowledged the Union's majority claim but asserted that its validity could be determined by "a procedure established by law," a Board "secret ballot representation election" (Pet. App. 8a-9a).

On July 21, the Union filed a petition for a Board election (Pet. App. 41a), and one was scheduled for August 6. However, in the intervening period the Company engaged in an extensive program of restraint and coercion, including threats of reprisal, promises of benefit, coercive interrogation, and illegal restraints on union solicitation and literature distribution (Pet. App. 19a-21a, 22a-39a). The Union lost the election, 81-67 (Pet. App. 6a, n. 2).

2. The Board found that the Company's activities during the election campaign had violated Section 8(a)(1) of the Act and, accordingly, set the election aside (Pet. App. 4a, 62a-63a). It considered and rejected Company challenges to authorization cards—*inter alia*, that certain of the cards were obtained under the misrepresentation that they would be used only for the purpose of securing a Board election—and found that the Union had valid authorization cards from a majority of the employees when it requested recognition.[1] (Pet. App. 43a-49a). On the

[1] The Board found that, at that time, the Union had obtained signed authorization cards from 87 of the Company's 169

basis of the Company's extensive unfair labor practices and failure to respond to the Union's offer to submit the cards to an impartial third-party check, the Board inferred that the Company had declined recognition, not because of a good faith doubt as to the Union's majority status, but in order to gain time to undermine the Union (Pet. App. 59a-61a).[2] Accordingly, the Board concluded that by refusing to bargain with the Union the Company violated Section 8(a)(5) and (1) of the Act (Pet. App. 61a). The Board ordered the Company to cease and desist from its unfair labor practice conduct, and to bargain, upon request, with the Union (Pet. App. 64a-66a).

The court of appeals found that the Board's findings were supported by substantial evidence, and enforced its order (Pet. App. 1a-3a).

3. The first question presented challenges the Board's position that where an authorization card unambiguously designates the Union as bargaining agent it will be invalidated only if the signer was coerced or told that the card's sole purpose was to secure a Board election, *Cumberland Shoe Corp.*, 144 NLRB 1268, enforced, 351 F.2d 917 (C.A. 6). This issue was raised in three cases in which petitions for certiorari

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employees (Pet. App. 58a-59a). By the card, the signer accepted "membership" in the Union and authorized the Union "to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment" (Pet. App. 1a).

[2] The court below, in affirming the Board, also noted that "the Company expressed no doubts as to the Union's majority status" (Pet. App. 2a).

were denied last Term. *National Labor Relations Board* v. *Crawford Mfg. Co.*, No. 1050, 390 U.S. 1028; *Preston Products Co.* v. *National Labor Relations Board*, No. 1367, 392 U.S. 906; *Bryant Chucking Grinder Co.* v. *National Labor Relations Board*, No. 1324, 392 U.S. 908. Although this issue is related to, it is not the same as, that on which the Board has petitioned in *National Labor Relations Board* v. *Gissel Packing Co., et al.*, No. 573, this Term. There are no special circumstances to distinguish this case from those of last Term on the *Cumberland Shoe* issue; thus, despite the continuing conflict in the circuits on this question, the Board sees no reason why review of the issue is any more warranted than it was last Term.

The second question presented is whether the Board and court properly concluded that the Company lacked a good faith doubt as to the Union's majority status, as shown by the authorization cards. Since the Board acted, in part, on the basis of an inference drawn from the Company's unfair labor practices, this case presents the same issue as *Gissel Packing*, *supra*, where the Court of Appeals for the Fourth Circuit held that an employer's refusal to recognize a union must always be deemed to have been prompted by a good faith doubt as to majority status where the union's claim rests on authorization cards alone. Accordingly, the Court may wish to defer ruling on the present petition until it disposes of the Board's petition in No. 573. The Board believes, however, that there was ample evidentiary support for its conclu-

sion,[3] and that the action of the Sixth Circuit in enforcing its order, which was in accord with the principle ordinarily applied in the courts of appeals, was correct.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,
National Labor Relations Board.

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[3] The Company's factual contentions (Pet. 2-3) do not withstand analysis. The Company never cited its past experience with other unions as a reason for declining Union recognition; and notwithstanding its instructions to its supervisors, it was found to have engaged in numerous unfair labor practices.

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